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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:15704 of 1994

DATED: 30-11-2006

Between:

1. Chukkala Jagannadham and 6 ohters

..... PETITIONERS

AND

1. The Revenue Divisional Officer, Vizianagaram and another.

.....RESPONDENTS

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ORDER:

Aggrieved by the order of the first respondent, in proceedings dated 16-08-1994, holding that the petitioners were ineligible for assignment of house sites and seeking a direction to the respondents not to interfere with their possession and enjoyment in respect of the assigned houses bearing Nos.100, 72, 106, 82, 89, 69 and 111 of Kataveedhi, Vizianagaram Town, the present writ petition is filed.

The petitioners claim to belong to the economically weaker

sections of society and to have applied for allotment of house site pattas in the year 1982-83. According to them, they were issued house site pattas after conducting necessary enquiry, in respect of house Nos. 100, 72, 106, 82, 89, 69 and 111 situated in Kataveedhi, Vizianagaram Town. They would submit that they had constructed houses and were residing thereat for the last more than ten years, that they do not have any other houses elsewhere and, if they were evicted from their houses, they would be on the streets. The second respondent sought to evict the petitioners in 1989 without putting them on notice. Aggrieved thereby, the petitioners filed W.P.No.7830 of 1999 for restoration of possession and the writ petition was allowed on 10-08-1989 directing the respondents to restore possession of the houses to them. This Court held that, if any action was to be taken against the petitioners, they were required to be put on notice and afforded an opportunity before they were dispossessed. The first respondent thereafter issued notices calling for their explanation as to why they should not be evicted on the ground that their annual income exceeded Rs.6,000/- per annum, that they were not eligible to continue in the houses and that the earlier allotment of houses in their favour was required to be cancelled. The petitioners filed individual representations, explaining to the first respondent, that the eligibility criteria for allotment of houses must be with reference to their status as on the date of assignment of the house site pattas and that they were all

eligible to continue in the houses allotted to them. The first respondent issued orders dated

16-03-1990 declaring that the petitioners were not eligible for assignment of house site pattas and were required to be dispossessed. Even before the said order could be questioned by them the petitioners were dispossessed. Aggrieved thereby they filed W.P.Nos.6048 and 6050 of 1992 seeking re-delivery of possession. This Court, by order dated 17-08-1993, allowed the writ petition holding that the eligibility criteria must be considered as on the date of assignment and not on the date of issuance of the show cause notice. This Court set aside the order, cancelling the assignment of house sites granted to the petitioners earlier, and directed the respondents to restore them to their houses. The second respondent was directed to conduct a fresh enquiry after giving opportunity to the petitioners and taking into consideration their income as on the respective dates of assignment, having regard to the guidelines fixed as on that date. The petitioners would state that their possession was restored pursuant to the order of this Court. Thereafter, the first respondent is said to have passed final orders, in proceedings No.10629/90 dated

16-05-1994, after considering the petitioners' representation, holding that they were eligible for assignment of house site pattas and that they should not be evicted. Subsequently, in the month of August, 1994, there was a change of the officer and the subsequent officer

passed the impugned order dated 16-08-1994 declaring that the petitioners were ineligible for assignment and hence the earlier assignment was liable to be canceled. The second respondent was directed to take possession of the houses.

Petitioners would rely on the proceedings dated 16-05-1994 to contend that since a finding had been recorded that they were eligible for assignment and, since the impugned order dated 16-08-1994 was passed without reference to the earlier order dated 16-05-1994, the subsequent order dated 16-08-1994 directing their eviction was liable to be declared illegal. According to the petitioners the power to pass an order, once exercised, could not be made available to the same officer for the second time and that no power of review was available with the first respondent. According to the petitioners, having passed final orders on 16-05-1994, the impugned order of the first respondent dated 16-08-1994 was ultravires, arbitrary and illegal.

A counter-affidavit is filed, on behalf of the respondents, wherein the fact that the petitioners belonged to economically weaker sections, as on the date of assignment of house sites, is denied. It is stated that the first petitioner is an employee of the Telecom Department and is working as a Class-IV employee drawing Rs.1,035/- per month vide proceedings dated 22-09-1989. It is stated that he was not assigned any house site patta and had

encroached upon the house site and was found to have constructed a house thereon. Similar details are referred in relation to the other petitioners. It is stated that since the annual income of all the petitioners, exceeded the prescribed income limit, they were ineligible for assignment of house site pattas and as such the first respondent was justified in seeking to have them evicted. Respondents would contend that the proceedings dated 16-05-1994 is a fictitious order and has been created only for the purpose of present writ petition. Respondents would state that the said order was obtained illegally through an officer by name Sri A.Gopala Rao who was then a Revenue Divisional Officer and was suspended for his involvement in an ACB Trap. Respondent would submit that no such orders were issued at all and it is a fictitious document created unlawfully and that the said document has no validity under law and should not be taken into consideration. It is stated that the impugned order dated 16-08-1994 was passed after a discreet enquiry and it was found that the petitioners were ineligible for assignment and they were therefore evicted from the house sites. It is stated that Sri G.T.Mohan Rao, as the Revenue Divisional Officer, Vizianagaram, had taken up an enquiry and on due enquiry found that the petitioners were not eligible for assignment of house sites and accordingly he had issued orders in his proceedings dated 16-08-1994.

Sri V.Venkata Ramana, learned counsel for the petitioners,

would seek to assail the impugned order dated 16-08-1994 on two grounds:-

1) An officer of the same rank was not empowered to review the order passed earlier on 16-05-1994 or to take a diametrically opposite view in passing the impugned order dated 16-08-1994.

2) Since the respondents have themselves admitted, in their counter-affidavit, that a discreet enquiry had been conducted, and as the petitioners were not given an opportunity of being heard, the impugned order dated 16-08-1994 was liable to be set aside on the ground of violation of principles of natural justice.

Learned Government Pleader for Revenue (Assignments), on the other hand, would submit that, since the proceedings dated 16-05-1994 is a fictitious and non-existent order, the contention with regards an officer of the same rank reviewing the said earlier order in his subsequent order dated 16-08-1994 does not merit acceptance. Learned Government Pleader would further submit that the first respondent had conducted an enquiry and based on the statement of the petitioners themselves, wherein they had admitted to be drawing a monthly salary far in excess of the limits prescribed of Rs.500/- per month, had come to the conclusion that they were

ineligible for assignment of house site pattas and that the impugned order is, therefore, valid.

No statutory provision, under which the impugned order dated 16-08-1994 came to be passed, has brought to the notice of this Court nor is it the case of the petitioners herein that the order dated 16-05-1994 came to be passed under the provisions of any statute. Unlike judicial/quasi-judicial orders, it cannot be said that administrative errors cannot be correctged by an officer of the same rank subsequently. In any event, it is the specific case of the respondents that the earlier order dated 16-05-1994 is fictitious and is non-existent and as such the question, of the impugned order dated 16-08-1994 having been passed in review of the earlier order dated 16-05-1994, does not arise.

The second submission of Sri V.Venkata Ramana, however, deserves to be accepted. Learned Government Pleader would place before this Court the statements of some of the petitioners and submit that these statements were given by petitioners in reply to the show cause notice issued by the Revenue Divisional Officer. A perusal of the statements would show that, while the petitioners had specifically stated that they were working in government organizations and were drawing salary in excess of Rs.500/- per month, it is not clear from the statements whether the salaries, which the petitioners were said to be drawing, was on the date on

which the statements were given or during 1982-83 when the assignments were made in their favour. As has held by this Court, in W.P.Nos.6048 and 6050 of 1992 dated 17-08-1993, the annual income of Rs.6,000/- has to be reckoned on the date of assignment and not a later date. This Court had directed the respondents to take into consideration the income of the petitioner-assignees, as on the respective dates of assignment, having regard to the guidelines fixed as on that date. This judgment inter-parties, having attained finality, is binding on the respondents. The respondents had, therefore, necessarily to ascertain and record a clear finding that the income of the petitioners, when they were assigned these house sites, exceeded the limits prescribed under the guidelines as prevailing then which is said to be Rs.6,000/- per annum.

Since the first respondent has not recorded any such finding, as required pursuant to the orders of this Court, in W.P.Nos.6048 and 6050 of 1992 dated 17-08-1993, the impugned order dated 16-08-1994 is set aside leaving it open to the first respondent to cause necessary enquiries in this regard, after giving the petitioners an opportunity of being heard and record a clear finding as to the income of the petitioners on the dates on which they were assigned house sites and thereafter take action in accordance with law.

The Writ Petition is disposed of accordingly. However, in the circumstances, without costs.

30th November, 2006

SKM